



AmeriHealth Caritas

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March 22, 2017

Federal Communications Commission
445 12th Street, SW
Room TW-A325
Washington, DC 20554

Submitted electronically to the Federal Communication Commission's website at: <https://www.fcc.gov/ecfs/>

RE: Reply Comment to MGMA Comment on DA-17144 - CG Docket No. 02-278 and No. 05-338

Dear Commissioners:

On behalf of the AmeriHealth Caritas Family of Companies (AmeriHealth Caritas), I am writing to express our general support for the comments made by the Medical Group Management Association (MGMA) on the petition for rulemaking and declaratory ruling filed on January 22, 2017, by Craig Moskowitz and Craig Cunningham (Petitioners). Petitioners seek to require “prior express written consent” for any calls or text messages made in an artificial or prerecorded fashion to a cellular or residential telephone. MGMA’s concern that Petitioners’ request could prevent medical group practices from communicating important healthcare-related information to their patients mirrors our own concerns regarding AmeriHealth Caritas’ ability to similarly communicate with our members. Furthermore, we support MGMA’s general suggestion that the FCC should clarify the relationship between regulations governing the Telephone Consumer Protection Act (TCPA) and those related to the Health Insurance Portability and Accountability Act (HIPAA). We submit this comment as a means of providing a managed care organization’s perspective on the same issues raised by MGMA.

Introduction:

AmeriHealth Caritas believes that Petitioners’ request would seriously hinder our efforts to provide vital healthcare-related information and services to our members and would negatively impact our overall outreach efforts. We urge the Federal Communications Commission (FCC) to (1) retain the current regulatory requirements regarding prior express consent and better align the guidance and regulations related to the TCPA with current HIPAA standards; or, in the alternative, (2) extend the “health care message” exemption for residential telephone lines found in 47 C.F.R. § 64.1200 to cellular devices.

With more than 30 years of experience, AmeriHealth Caritas is one of the nation’s leaders in health care solutions for those most in need. Operating in 17 states and the District of Columbia, AmeriHealth Caritas serves more than 5.7 million Medicaid, Medicare and CHIP members through its integrated managed care products, pharmaceutical benefit management and specialty pharmacy services, behavioral health services, and other administrative services. Due to the population we serve, we cannot support regulatory changes that will place barriers on our abilities to do outreach via mobile and residential telephone lines.

Background on the Issue: A Medicaid Perspective

At AmeriHealth Caritas, one of the greatest challenges we face is keeping our members engaged so they continue to receive necessary health care treatments and services. The transient nature of a large number of our members, whom often change residential phone numbers or in many cases do not have one, requires reliance on mobile phones as a primary method of outreach.

Outreach efforts are an essential component of our ability to communicate with members regarding their health care, as well as a requirement of the government agencies we serve. Our contracts with those agencies require ongoing case management for identified populations, reminders for health screenings and follow-up for identified health care needs. The mobile phone is a highly effective mechanism for these efforts.

AmeriHealth Caritas does not take for granted that all of our members have access to a mobile phone. We support the continuation of the Lifeline program, and submitted comments to the FCC on the importance of the program to our members in 2015. With the Lifeline program, we are able to provide our members with mobile phones, leading to better communication among AmeriHealth Caritas, the member and the member's health care providers. The success we have had with the program continues to be instrumental in our ability to provide the health care services our members need.

Concerns Regarding the Petition

If the Petitioners' sought relief were to be implemented, it would be extremely difficult for AmeriHealth Caritas to obtain the necessary prior express written consent needed to ensure that our outreach efforts could continue. Generally, prior express written consent for contact would be included in an agreement between the member and insurer. However, unlike individuals who receive healthcare coverage through the private market or Medicare insurance plans, the majority of individuals enrolled in a Medicaid managed care organization are not required to directly sign an agreement with their coverage provider. Instead, Medicaid beneficiaries generally enroll through their state agency, which then assigns members to a managed care organization without any need for a signed agreement. Furthermore, given the transient nature of the Medicaid population, obtaining signed agreements after enrollment is complete would be ineffective and would only cause delays in the management of member care.

Without the necessary consent, or as a result of the delay caused by efforts to obtain the consent, AmeriHealth Caritas' health-related outreach efforts to its Medicaid membership would face serious burdens, which could lead to potentially negative health outcomes. Examples include:

- Delayed completion of member health risk assessments (required by state contracts).
- Untimely or non-existent health care reminders for preventive care such as mammograms, diabetes screenings, Early and Periodic Screening, Diagnostic and Treatment (EPSDT) screening, or child immunization appointments.
- Inability to assist with scheduling doctor appointments or medication refill reminders.
- Inability to coordinate needed care following hospitalization or emergency room visits, which is necessary to reducing hospital readmissions.



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As noted in the *Joint Petition for Declaratory Ruling and/or Clarification of the 2015 Telephone Consumer Protection Act* filed on July 28, 2016, “empirical studies demonstrate that health care-related texts and calls lead to more engaged patients, better patient outcomes, and lower health care costs for consumers. These are critical public health goals.”

Suggested Action Regarding the Petition

AmeriHealth Caritas believes that the FCC should maintain the current regulatory requirements on the type of consent needed for automated and pre-recorded cellular and residential communications as well as endeavor to harmonize its requirements with current HIPAA standards governing non-telemarketing calls. As we noted in our previous September 2016, letter on this topic, AmeriHealth Caritas relies on HIPAA-compliant non-telemarketing calls to provide necessary services to its members. The current guidance that we follow allows us to stay in touch with our members to help them receive needed preventive care services and encourage their adherence to treatment regimens. HIPAA requirements also protect members’ private information through robust privacy measures. For these reason, we encourage the FCC to clarify and confirm that the provision of a phone number to a “covered entity” or “business associate” (as those terms are defined under HIPAA) constitutes prior express consent for non-telemarketing calls allowed under HIPAA for the purposes of treatment, payment or health care operations (TPO). AmeriHealth Caritas also supports ensuring that members retain the right to revoke consent to non-telemarketing health care communications as defined under HIPAA.

Alternatively, AmeriHealth Caritas suggests that the FCC extend the existing “health care message” exemption for residential calls currently found in 47 C.F.R. § 64.1200(a)(3)(v) to cellular devices. That exemption permits the use of artificial or prerecorded voice calls made to residential telephones without prior express written consent if the message is “health care” related and is made by, or on behalf of, a “covered entity” or its “business associate” (as those terms are defined by HIPAA). However, there is no similar exemption for cellular devices, which is often the preferred method of communication for AmeriHealth Caritas’ members. Adding such an exemption to cellular devices and clarifying its scope would permit AmeriHealth Caritas to continue to contact its members while preserving the privacy rights of consumers in other markets and industries.

We appreciate the concerns and position raised by MGMA as well as the opportunity to provide a Medicaid managed care perspective on these issues. If you have any questions concerning this letter, please contact me at (215) 937-8324 or by email at agelzer@amerihealthcaritas.com.

Sincerely,

Andrea Gelzer, MD, MS, FACP
Senior Vice President & Corporate Chief Medical Officer